IN THE HIGH COURT OF DELHI

RSA.No.7/2001

Shri K.L.Ganju ..... Appellant
! through: Mr.Arvind Chaudhary, Advocate

VERSUS

$ Shri Sidhartha Shankar ..... Respondent
^ through : Mr.O.P.Saxena, Advocate

RESERVED ON: 17.12.2007

% DATE OF DECISION: 20.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Following substantial question of law needs to be answered :-

> Whether on the evidence on record the First Appellate Court was justified in reversing the judgment and decree passed by the learned Trial Court?

2. The respondent filed a suit for injunction (mandatory and prohibitory) against the appellant pleading that he owned the ground floor flat bearing No.D-7/7033, Sector-D, Pockets 7 & 8, Vasant Kunj, New Delhi. That the flat was constructed by DDA. An open court yard formed part of the flat. As per the office order issued by DDA he was entitled to lay a roof on the

open court yard and construct a bath room and a WC. Under said right the open court yard was covered and a bathroom and a WC was constructed. Grievance made was that the appellant who was the owner of the first floor flat was threatening to raise construction on the roof constructed by him to cover the open court yard. Prohibitory injunction was prayed for to restrain the appellant to raise any construction thereon. Further grievance made was that the appellant had increased the size of his window which opened towards his court yard. Mandatory injunction was prayed for that the appellant should be directed to restore the window to the original size.

3. Appellant alleged in the written statement that the appellant had a right to increase the size of the window. That the constructions raised by the respondent was not permissible. The appellant asserted a right to construct on the roof erected by the plaintiff while covering the open court yard.

4. Issue framed by the learned Trial Judge was whether the plaintiff was entitled to the relief for permanent and mandatory injunction.

5. Since at the hearing held on 17.12.2007 learned counsel for the respondent stated that the respondent does not press the relief of mandatory injunction prayed for, I need not decide on the said issue save and except to note that the

relief of mandatory injunction prayed for is treated as dismissed as withdrawn.

6. On the issue of prohibitory injunction, an office order dated 13.12.1996 issued by DDA was filed by the respondent as also the appellant. The respondent i.e. plaintiff referred to the said document in his testimony. The document was marked 'A'. The same very document was referred to by the appellant in his testimony. It was exhibited as Ex.DW-1/2.

7. But since neither party summoned any official witness from DDA learned Trial Judge opined that the document was not proved as per law. Accordingly, learned Trial Judge held that the plaintiff had failed to prove that he could effect construction of a roof on the open court yard. It was held that since the plaintiff had raised unauthorized construction he could not seek any prohibitory relief against the appellant.

8. The suit was dismissed.

9. The Appellate Court reversed the decision holding that when both the parties rely upon the same document notwithstanding that the document is an official document, same need not to be proved by summoning an official witness for the reason the existence and contents of the document in question is not in dispute. Holding that the office order Ex.DW-1/2 was the common document filed by the parties and that it

permitted constructions of a bathroom and WC in the court yard and also permitted covering of the open court yard, learned Appellate Judge granted prohibitory injunction prayed for the reason, appellant led no evidence to show that in law he was entitled to raise construction on the roof in question.

10. I find no infirmity in the view taken by the learned Appellate Judge.

11. Firstly, it has to be noted that the appellant did not file any counter claim, much less prayed that the constructions effected by the plaintiff should be demolished. Thus, the learned Trial Judge was not required to decide on the legality and validity of the constructions effected by the respondent.

12. Secondly, the only issue which had to be decided was, whether the appellant had a right to effect constructions on the roof laid by the plaintiff while covering the open court yard.

13. To succeed, appellant had to prove, through the medium of the building bye laws or a notified policy of the Government authorizing him to raise constructions on the roof in question.

14. Whereas plaintiff proved right to erect the roof by and under the office order Ex.DW-1/2, though he was not required to so prove, appellant failed to bring on record any document where from a right in his favour could be

established.

15. The question of law framed is accordingly answered by holding that in view of Ex.DW-1/2 the Appellate Court was justified in reversing the judgment and decree passed by the learned Trial Judge.

16. Before concluding I may note that if any law permits, after obtaining sanction from the authority concerned, it would be open to the appellant to raise construction but the same would be strictly in terms of sanction so obtained.

17. Noting on record the concession made by learned counsel for the respondent that the respondent gives up the relief of mandatory injunction prayed for, the appeal stands dismissed.

18. No costs.

December 20, 2007 (PRADEEP NANDRAJOG)
pu JUDGE